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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
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7 Case No. 18-cv-02349-BLF

8 JANE DOE 1, et al.,
9 Plaintiffs,
10 v.
11 CHAD D. WOLF, et al.,
12 Defendants.
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**ORDER DENYING PLAINTIFFS'
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL PORTIONS OF
PLAINTIFFS' FIRST AMENDED
COMPLAINT AND PLAINTIFFS'
MOTION (1) FOR LEAVE TO FILE A
FIRST AMENDED COMPLAINT; (2)
TO SUBSTITUTE PARTIES AND
PROCEED BY PSEUDONYM; AND (3)
TO AMEND CLASS CERTIFICATION
ORDER**

[Re: ECF 290]

16 Before the Court is Plaintiffs' administrative motion to file under seal portions of
17 Plaintiffs' first amended complaint and Plaintiffs' Motion (1) for Leave to File a First Amended
18 Complaint; (2) to Substitute Parties and Proceed by Pseudonym; and (3) to Amend Class
19 Certification Order. ECF 290. Defendants filed a declaration in support of this motion. ECF 296.
20 For the reasons stated below, the Court DENIES Plaintiffs' administrative motion.

21 Plaintiffs filed their administrative motion because Defendants designated portions of
22 Plaintiffs' First Amended Complaint and Motion (1) for Leave to File a First Amended
23 Complaint; (2) to Substitute Parties and Proceed by Pseudonym; and (3) to Amend Class
24 Certification Order as "Confidential" and/or "Highly Confidential/Attorneys' Eyes Only."
25 ECF 290, at 1. Plaintiffs do not believe that Defendants can meet the standard for sealing these
26 portions of the documents and "believe the Court should deny this motion because Plaintiffs
27 dispute Defendants' over-designation of information." ECF 290, at 2.

28 This parties will submit letter briefing on this over-designation dispute to Judge DeMarchi

1 on March 13, 2020. ECF 290, at 2; *see* Order Re Discovery Dispute Resolution Schedule,
2 ECF 273. Plaintiffs request that this sealing request be consolidated with the over-designation
3 dispute. ECF 290, at 2.

4 Defendants responded by submitting a declaration in support of Plaintiffs’ administrative
5 motion because they are the designating party for the protected material. ECF 296, at 1.
6 Defendants state that they “cannot declare that ‘all of the designated material is sealable’” because
7 “Defendants do not know precisely which documents/materials Plaintiffs rely upon for their
8 assertion that their identified redactions constitute sealable material.” ECF 296, at 4. Defendants
9 state that they “will explain further in their portion of the forthcoming joint dispute letter . . . the
10 material [that] warrants [Highly Confidential/Attorneys’ Eyes Only] designation – and thus should
11 be protected from disclosure to the public.” ECF 296, at 4. Additionally, Defendants argue that
12 the designated material is sealable because it “discloses vetting techniques/processes/thresholds;
13 denial bases and results of individual class member applications; and sources that inform refugee
14 vetting generally and Plaintiff-class members’ cases specifically.” ECF 296, at 4. Defendants
15 argue that “public disclosure of the designated information creates a substantial risk of serious
16 harm to the security of the United States and to the integrity of the refugee program by providing
17 insight that could enable applicants and bad actors to adjust both their behavior and the
18 information available to conduct security vetting in administering the refugee program.”
19 ECF 296, at 4.

20 Parties moving to seal documents must comply with the procedures established by Civil
21 Local Rule 79-5.

22 First, under Civil Local Rule 79-5(d)(1)(A), “[r]eference to a stipulation or protective order
23 that allows a party to designate certain documents as confidential is not sufficient to establish that
24 a document, or portions thereof, are sealable.” The Court, therefore, need not wait for resolution
25 of the over-designation dispute by Judge DeMarchi as the designation of material as “Highly
26 Confidential/Attorneys’ Eyes Only” would not be a sufficient reason to seal information.

27 Second, under Civil Local Rule, the designating party “must file a declaration as required
28 by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L. R.

1 79-5(e)(1). While Defendants, the designating party, filed a declaration and provided some
2 reasons as to why the information should be sealed, they specifically state that they “cannot
3 declare that ‘all of the designated material is sealable’ as required under LR 79-5(d)(1)(A).”
4 ECF 296, at 4. As this declaration does not comply with the Civil Local Rules, the Court DENIES
5 Plaintiffs’ administration motion to file under seal.

6 For any request that has been denied because the party designating a document as
7 confidential or subject to a protective order has not provided sufficient reasons to seal, the
8 submitting party must file the unredacted (or lesser redacted) documents into the public record no
9 earlier than 4 days and no later than 10 days from the filing of this order.

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11 **IT IS SO ORDERED.**

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13 Dated: March 6, 2020



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15 BETH LABSON FREEMAN
16 United States District Judge
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